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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/840,332
Filing Date: April 23, 2001
Appellant(s): HAMMANN, JERALD A.

Patrick G. Billig Reg. 38,080
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 20 December 2010 appealing from the Office action mailed 31 March 2010.

(1) Real Party in Interest

The examiner has no comment on the statement, or lack of statement, identifying by name the real party in interest in the brief.

(2) Related Appeals and Interferences

The following are the related appeals, interferences, and judicial proceedings known to the examiner which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal:

Appeal Brief filed in co-pending case United States Serial Number 09/999,378. There is a double patenting rejection of claims 31-40 over claims 1, 7, 12, 17, 22, and 66-70 of co-pending Application No. 09/999,378.

(3) Status of Claims

The following is a list of claims that are rejected and pending in the application:

Claims 31-40 are pending.

(4) Status of Amendments After Final

The examiner has no comment on the appellant's statement of the status of amendments after final rejection contained in the brief.

(5) Summary of Claimed Subject Matter

The examiner has no comment on the summary of claimed subject matter contained in the brief.

(6) Grounds of Rejection to be Reviewed on Appeal

The examiner has no comment on the appellant's statement of the grounds of rejection to be reviewed on appeal. Every ground of rejection set forth in the Office action from which the appeal is taken (as modified by any advisory actions) is being maintained by the examiner.

(7) Claims Appendix

The examiner has no comment on the copy of the appealed claims contained in the Appendix to the appellant's brief.

(8) Evidence Relied Upon

6,922,672	Hailpern et al.	7-2005
5,630,070	Deitrich et al.	5-1997

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

[1] Claims 31-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hailpern et al. (U.S. 6,922,672) in view of Deitrich et al. (United States Patent#6,630,070).

As per claim 31, Hailpern et al. teaches a computer-based method for capacity/demand management in human factor resource industries, comprising:

accepting, via computer, transaction parameter values for resources, wherein each resource has associated therewith at least a service location and at least one of a service date and a service time (See column 2, lines 37-40 and 59-65, column 3, lines 1-5, 22-25 and 50-67, column 4, lines 20-45, wherein parameter values are received from a business regarding a resource, wherein the parameter values represent the promotional or other deal with which a

resource is being sold. The resource has associated therewith a service location and a time period for the transaction. See also see column 5, lines 1-6. Hailpern et al. discloses a store, geographic location, and area);

accepting from at least one potential user of resources, via computer, at least one resource transaction parameter value other than the potential user's geographic location (See column 2, lines 27-36, column 3, lines 50-55, column 5, lines 1-6, wherein customer's behavior and information is monitored via the computer system, wherein this information includes profile information, past buying history, etc.);

communicating to the at least one potential user of the at least one resource at least a portion of the transaction parameter values for at least one resource related to the potential user's at least one transaction parameter value (See figure 3, column 2, line 59-column 3, line 10, and column 4, lines 20-25, wherein a promotion with transaction values is communicated to a user);

modifying, in response to the communication at least one of a demand for the at least one resource and a capacity of the at least one resource, wherein when the capacity exceeds the demand for the at least one resource, the modifying includes increasing the demand for and/or decreasing the capacity of the at least one resource (See column 2, lines 35-45 and 51-65, and column 4, lines 20-45, wherein the communication causes a modification to the demand for the resource. This is done because the capacity and inventory of the resource exceeds the demand by consumers for the resource);

wherein the at least one service date and service time is a date and/or time point or range measure indicating a present or future first date and/or time when the service is available (See column 2, lines 37-40 and 59-65, column 3, lines 1-5, 22-25 and 50-67, column 4, lines 20-45,

wherein there is a timeframe from the moment the promotion is communicated to its expiration representing when the product/service is available);

wherein the at least one service availability date and time is related to the availability of at least one service provider resource comprising in part the at least one resource, wherein the at least one service provider resource is a human resource, wherein the at least one service provider resource contributes more than a nominal amount of time producing and/or making available the at least one resource (at least col. 2, lines 37-65 teach providing services, or a service provider resource; col. 2, lines 37-65 teach a business providing services, or the service providers as human resources because a business providing services inherently contains human resources providing the services on some level; and the business contributes more than a nominal amount of time making available the at least one resource);

wherein the communication occurs prior to any first assignment of other concurrently-consumed and/or concurrently-utilized resources to the at least one potential user (See column 3, lines 1-5, wherein the promotion is communicated to the user prior to the use of a concurrent resource, where a product must be purchased with another product);

wherein the capacity of the at least one resource is a measure of the on-hand supply and/or availability, if applicable, of the at least one resource at a first date and/or time plus a measure of an ability to produce and/or make available additional quantities of the at least one resource over a first date and/or time period beginning at the first date and/or time and ending at a second date and/or time (See column 2, lines 35-45 and 51-65, and column 4, lines 20-45, which discusses capacity of a resource (i.e. good/service) at given periods of time. Capacity is the ability to produce, perform, deploy, or to make output, a maximum amount);

wherein the measure of an ability to produce and/or make available additional quantities of the at least one resource over a first date and/or time period beginning at the first date and/or time and ending at a second date and/or time is derived from at least one human factor resource and is not a static ability (See column 2, lines 35-45 and 51-65, and column 4, lines 20-45, which discusses service capacity, wherein service is performed by human resources); and,

wherein the demand for the at least one resource is a measure of the on-hand consumption and/or utilization, if applicable, of the at least one resource at the first date and/or time plus a measure of an ability to consume and/or utilize additional quantities of the at least one composite resource over the first date and/or time period (See column 2, lines 37-65, wherein demand is discussed in terms of current (demand is low) and future (moving the item over time in a dynamic environment)).

However, Hailpern et al. does not expressly disclose that the resources are composite resources.

Hailpern et al. discloses communicating with customers when demand is low and there is capacity of a product or service to “move”. Examiner takes official notice that it is old and well known that products are made up of individual resources that come together to create the overall product and services are made up of individual service pieces that come together to create the overall service. Further, whether the resource is a composite resource or resource does not appear to functionally effect the limitations of the claim. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to include composite resources in place of the product/service resources of Hailpern et al. in order to produce the predictable

results of selling the composite resource when the demand for such a resource is low (i.e. move the composite resource through communications with customers).

Claim 31 recites with respect to the "...accepting...transaction parameter values...". Specifically, the limitation has been amended to remove "at least one of..." language to specifically require the "...each composite resource has associated therewith at least a service location, a service date and a service time...".

The remainder of claim 31 specifies a "date and time" in contrast to the previously presented alternative language of "date and/or time".

As per this element, while Hailpern discloses a time frame, Hailpern fails to provide specific recitation that the time frame includes a "service time and a service date" as presented in amended claim 31.

However, as evidenced by Deitrich et al., the designation of a time frame for an inventory forecast including a specified start date and time and an end date and time, is well known in the restaurant supply chain management art (Dietrich et al.; Abstract, col. 6, lines 26-50, col. 35, lines 18-67 and col. 36, lines 1-11 *see selection of shipping and inventory dates).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the generalized designation of a time frame disclosed by Hailpern with the well known practice of inputting a designation of a specific start time and date as well as an end time and date for a supply forecast as taught by Deitrich et al. with a reasonable expectation of successfully defining a time frame for analysis of past promotions (Deitrich et al.; col. 35, lines 18-67 and col. 36, lines 1-11). Further motivation would have been to fill supply orders in a manner which maximizes profit and reduces on-hand inventory (Deitrich et al.; col. 2, lines 50-55).

Claim 32 is substantially similar to claim 31 and has been amended to reflect the amendments to claim 31 and is therefore rejected using the same art and rationale set forth above. Hailpern et al. discloses a system with means in at least figures 1C and 2, and column 3, lines 45-67.

Claim 33 is substantially similar to claim 31 and has been amended to reflect the amendments to claim 31 and is therefore rejected using the same art and rationale set forth above in the rejection of claim 31. Hailpern et al. further teaches a storage device storing a program and a processor connected to the storage device and controlled by the program, the processor operative with the program (column 4, lines 1-17).

Claim 34 is substantially similar to claim 31 and has been amended to reflect the amendments to claim 31 and is therefore rejected using the same art and rationale set forth above in the rejection of claim 31. Hailpern et al. further discloses storing data related to resources

(See column 4, lines 1-17). However, Hailpern et al. does not expressly disclose composite resources or constructing internal data structures which link each of the individual resources to associated composite resources and link each of the composite resources to associated individual resources.

Hailpern et al. discloses communicating with customers when demand is low and there is capacity of a product or service to “move”. Hailpern et al. further discloses memory and storing data associated with the system, as well as maintaining inventory and service capacity information concerning resources. Examiner takes official notice that it is old and well known that products are made up of individual resources that come together to create the overall product and services are made up of individual service pieces that come together to create the overall service. Further, relational databases are old and well known in the art and link stored data that is related together for more efficient storage and access speed. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to include composite resources in place of the product/service resources of Hailpern et al. in order to produce the predictable results of selling the composite resource when the demand for such a resource is low (i.e. move the composite resource through communications with customers). Further, it would have been obvious to one of ordinary skill in the art at the time of the invention to include internal data structures that link each of the individual resources to associated composite resources and link each of the composite resources to associated individual resources in order to increase the efficiency of storing and accessing the data by using relational database technology.

Claim 35 is substantially similar to claim 31 and has been amended to reflect the amendments to claim 31 and is therefore rejected using the same art and rationale set forth above

in the rejection of claim 31. Hailpern et al. further teaches receiving a responding communication from at least one user binding the at least one resource with specified transaction parameter values (See column 2, line 55-column 3, line 5, wherein the user responds to the promotion and buys a product/service resource).

As per claims 36-40, Hailpern et al. discloses that when demand exceeds the capacity for the at least one resource, the modifying includes decreasing demand for the at least one resource and/or increasing the capacity of the resource (Examiner notes that since Hailpern et al. teaches above that capacity exceeds demand, this limitation does not specifically occur (i.e. is not required). However, see column 2, lines 37-60, which discloses when demand is high, but there is low capacity/inventory).

However, Hailpern et al. does not expressly disclose that the resources are composite resources.

Hailpern et al. discloses communicating with customers when demand is low and there is capacity of a product or service to "move". Examiner takes official notice that it is old and well known that products are made up of individual resources that come together to create the overall product and services are made up of individual service pieces that come together to create the overall service. Further, whether the resource is a composite resource or resource does not seem to functionally effect the limitations of the claim. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to include composite resources in place of the product/service resources of Hailpern et al. in order to produce the predictable results of selling the composite resource when the demand for such a resource is low (i.e. move the composite resource through communications with customers).

(10) Response to Argument

In the Appeal Brief filed 20 December 2010, Appellant makes the following arguments:

(A) Hairpern et al. does not teach composite resources "...wherein each composite resources has associated therewith at least a service location, a service date and a service time...."

(B) Hairpern et al. does not teach "...wherein the at least one composite resource communicated is related to the potential user's at least one transaction parameter value..."

(C) Hairpern et al. does not teach "...wherein the at least one service date and time is a date and time point or range measure indicating a present or future date and time when the service is available..."

(D) Hailpern et al. does not teach "...wherein the capacity of the at least one composite resource is a measure of on-hand supply and/or availability, if applicable, of the at least one composite resource at a first date and time plus a measure of an ability to produce and/or make available additional quantities of the at least one composite resource over a first date and time period beginning at the first date and time and ending at a second date and time...."

(E) Hairpern et al. does not teach "...wherein the measure of an ability to produce and/or make available additional quantities of the at least one composite resource over a first date and time period beginning at the first date and time and ending at a second dates and time is derived from at least one human factor resource and is not a static ability...."

(F) Hailpern et al. does not teach "...wherein the demand for the at least one composite resource is a measure of the on-hand consumption and/or utilization, if applicable, of the at least one composite resource at the first date and time plus a measure of an ability to consume and/or utilize additional quantities of the at least one composite resource over the first date and/or time period..."

(G) Hailpern et al. does not disclose "...*modifying includes decreasing the demand for the at least one composite resource and/or increasing the capacity of the at least one composite resource...*".

(H) Dietrich et al. and Hailpern et al are not in the same field.

(I) Dietrich et al. does not teach a date or time measure.

(J) Combining Hailpern et al. and Dietrich et al. does not create a valid obviousness rejection.

Examiner will address the Appellant's arguments in the order presented in the Appeal Brief filed 20 December 2010..

Arguments (A (B) and (C):

In response to Appellant's arguments (A), (B), and (C), that Hailpern et al. fail to disclose features of the claimed invention related to availability of composite resources, Examiner respectfully disagrees and directs Appellants's attention to the applied teachings of Hailpern and Dietrich. Specifically, with respect to Appellant's argument A, Hailpern discloses a promotional system/method which determines an inventory or service capacity availability level (Hailpern; col. 2, lines 40-50) and defines promotion to increase demand of the target product including a promotional period and a location for availability of the target product or service (Holden; col. 2, lines 45-67 and col. 3, lines 1-10). In specific reference to the promotion, Hailpern provides that the a promotional start time is determined and a promotional period is determined (Hailpern; col. 3, lines 1-20). Specifically, Hailpern states that "a promotion may expire within a predetermined period of time" (col.3, lines 2-3) and "...if it is desirable to increase the sales of a particular product within several hours, the target group of customers is those customers who are geographically location near the store which is selling the product..." (col. 3, lines 11-15). Examiner acknowledges that Hailpern fails to use the term "time" when defining the start and end times for the promotional period, however, Examiner respectfully maintains that a

promotional period having an expiration within a period of time and a start as determined by the need to promote a given stocked item of excess service capacity, as conveyed by Hailpern in the above applied teachings, inherently has a specific start time and end time as dictated by the promotional period. Examiner further notes in specific reference to composite resources, Dietrich et al. disclose and is applied to evidence the designation of a time frame for an inventory forecast including a specified start date and time and an end date and time, is well known in the art (Dietrich et al.; Abstract, col. 6, lines 26-50, col. 35, lines 18-67 and col. 36, lines 1-11 *see selection of shipping and inventory dates).

Appellant's arguments B and C are similar to argument A and further contend that Hailpern's resource identified is not "related to the potential user's at least one transaction parameter *value*" (Argument B) and that Hailpern fails to teach resource availability for a "...time point or range measure indicating a present or future date and time when the service is available..." (Argument C).

In response, Examiner respectfully disagrees and notes that Hailpern et al. disclose determining the promotional item based on at least two factors: (1) the stock level of the item or capacity of a service in the case of a service business (Hailpern; col. 2, lines 37-50) and (2) target customer characteristics or profile (Hailpern et al.; col. 3, lines 5-20 and col. 4, lines 18-40). See in particular, Hailpern designates a specific car for sale to customers defined by proximity to the store and the income level of the customer (col. 3, lines 5-20). Hailpern further notes that the target product or service, i.e., "resource" is targeted to customer having a profile indicative of a

demographic group likely to purchase the specific item or service (Hailpern et al.; col. 4, lines 14-18). Examiner notes the Specification of the instant invention as originally filed, which includes a user profile as a parameter for determining the resource (Specification; paragraphs [0130] and [0134] *see user/individual's profile as a parameter). Examiner maintains that Hailpern's profile and characteristics used to match a target product for promotion, constitutes a parameter value that is related to the resource, as claimed and considered in light of the noted paragraphs of the specification as originally filed.

With respect to Argument C, Examiner initially notes the claim language which specifies "...time point **or range** measure indicating a present or future date and time when the service is available...". As notes above, HJailpern discloses a promotional period having a start and an expiration within "a predetermined period of time". Examiner respectfully maintains that a "predetermined period of time" is a "range".

Arguments (D) (E) (F) and (G):

Appellant's arguments (D)-(F) focus on the features of the claimed invention related to measuring supply/capacity and adjusting demand. Specifically, Argument (D) contends that Hailpern does not teach "...wherein the capacity of the at least one composite resource is a measure of *on-hand supply and/or availability, if applicable...*". In response, Examiner initially directs Appellant's attention to the alternative language of "if applicable" presents a conditional limitation in which the recited circumstances/steps are not positively required and therefore not

necessarily performed. In further response, Hailpern discloses measurements of store conditions and capacity/inventory (depending on business type and product offered) (Hailpern; col. 4, lines 25-36). Examiner maintains that these measurements by Hailpern constitute measurement of on hand supply and an ability to make quantities available.

Argument (E) further contends that Hailpern's composite resources and service capacity are not "human factor resource and not a static ability". In response, Examiner respectfully disagrees and notes the applied teachings of Hailpern at col. 2, lines 37-39 and 25-35. Specifically, Hailpern disclosed that the invention is applicable to product oriented businesses selling a physical product and to service business selling a service (col. 2, lines 37-39). Hailpern further disclose monitoring adjustments in service capacity and inventory, as delineated by changing store conditions (col. 4, lines 25-35). Examiner maintains that monitoring adjustments to store conditions including "service capacity" for a service oriented business is considering "human factor resources that is "not a static ability" (*see changing store conditions, i.e., "not a static ability".

In response to Argument (F), Examiner initially notes the conditional limitation as denoted by the recitation of "if applicable". Examiner further notes the applied teachings of Hailpern at col. 2, lines 45-55 and col. 4, lines 25-35 which disclose the monitoring of demand levels in relation to the available supply/capacity. Examiner maintains that this teaching constitutes "...wherein the demand for the at least one composite resource is a measure of the on-hand consumption and/or utilization, if applicable, of the at least one composite resource at the first date and time

plus a measure of an ability to consume and/or utilize additional quantities of the at least one composite resource over the first date and/or time period..." as claimed.

In response to Argument (G) Hailpern et al., Examiner initially notes the conditional language "...decreasing demand....or increasing the capacity...". Hailpern discloses controlling demand (i.e., increasing and decreasing demand) by determining a promotion for a target item or service (Hailpern; col. 2, lines 59-67 and col. 3, lines 1-5). Examiner considers the determination of targeted promotions to constitute decreasing demand (e.g. a determination of no promotion) and increasing demand (e.g., implement a promotion to increase demand). Examiner further maintains that this teaching constitutes "...*modifying includes decreasing the demand for the at least one composite resource and/or increasing the capacity of the at least one composite resource...*" as claimed.

Arguments (H) (I) and (J):

Appellant's arguments H, I, and J are directed to the contention that the combination of Hailpern and Dietrich is improper. In response, Examiner respectfully disagrees and initially notes that in many, if not most, situations, there is neither a motivation to make the modification clearly articulated in the references nor an evident lack of motivation. Rather, the prior art references typically disclose elements or aspects of the claimed subject matter, but fail to specifically point the way toward the combination, substitution or other modification needed to arrive at the invention. A judgment must be made whether "a person of ordinary skill in the art would have

sufficient motivation to combine the individual [elements] forming the claimed [invention]." See *In re Clinton*, 527 F.2d 1226, 1228, 188 USPQ 365, 367 (CCPA 1976).

Argument I contends that Dietrich does not teach a date or time measure. In response, Examiner respectfully disagrees and maintains that Dietrich et al. provides evidence that designation of a time frame for an inventory forecast including a specified start date and time and an end date and time, is well known in the art (Dietrich et al.; Abstract, col. 6, lines 26-50, col. 35, lines 18-67 and col. 36, lines 1-11 *see selection of shipping and inventory dates).

Arguments H and J contend that the references are "not in the same field" (Argument H) and the combination fails to "create a valid obviousness rejection" (Argument J). In response Examiner respectfully disagrees and notes that Hailpern is directed to a demand control and inventory monitoring system in which demand is adjusted by promotional efforts and further that the promotional efforts are directed by an assessment of inventory and service capacity (i.e., inventory and supply chain). Dietrich et al. is directed to an inventory/supply chain method which further considers demand for the composite product (see at least Dietrich; Abstract). Accordingly, Examiner respectfully submits that Hailpern and Dietrich present analogous references and that the teachings applied from the respective references are applied in the manner disclosed. Accordingly, the modification would have been obvious to one of ordinary skill in the art at the time the invention was made motivated by combining prior art elements accordingly to known methods to yield the predictable results of filling supply orders in a manner which maximizes profit and reduces on-hand inventory (Dietrich et al.; col. 2, lines 50-55).

Notable: In exemplary fashion Deitrich provides an application of the inventive supply chain optimization concept to a hypothetical restaurant business (Dietrich; tables 1-4).

Examiner maintains that the combination of Hailpern and Dietrich is both proper and presents a valid obviousness rejection.

(11) Related Proceeding(s) Appendix

Copies of the court or Board decision(s) identified in the Related Appeals and Interferences section of this examiner's answer are provided in the Appeal Brief filed 20 December 2010.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/R. David Rines/

Primary Examiner, Art Unit 3623

Conferees:

Beth Boswell /bvb/

SPE AU 3623

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Art Unit: 3623

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Appeals Conference Specialist